No. 12692

IN THE

United States Court of Appeals

FOR THE NINTH CIRCUIT

PALOMAS LAND AND CATTLE COMPANY, a Corporation,
Appellant,

vs.

ARTHUR D. BALDWIN, as Surviving Trustee Under a Certain Agreement of Trust Dated October 29, 1943; LOUIS A. SCOTT, JOHN L. RASBERRY, and JAMES F. HULSE, Partners Doing Business Under the Firm Name and Style of BURGES, SCOTT, RASBERRY & HULSE,

Appellees.

On Appeal From the United States District Court for the Southern District of California Central Division

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Brief of Appellees Louis A. Scott, John L. Rasberry and James F. Hulse.

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Appellees LOUIS A. SCOTT, JOHN L. RASBERRY and JAMES F. HULSE (hereinafter for convenience referred to usually as "appellee Rasberry" and sometimes as the "law firm") join in and adopt the brief filed herein by appellee ARTHUR D. BALDWIN (hereinafter usually referred to as "appellee Baldwin"). In addition, appellee Rasberry respectfully submits the following supplementary comments:

I.

The Court Below Properly Entertained Jurisdiction of This Interpleader Action.

The main question brought to this Court by appellant is one of *jurisdiction;* that is, whether the District Court had power to entertain the within interpleader action.

Title 28 U. S. C. 1335 is clear and explicit. It confers interpleader jurisdiction "* * * if (1) Two or more adverse claimants * * * *are claiming or may claim*[1] to be entitled * * *" to the sum of $500.00 or more in the plaintiff's possession "* * * and if (2) the plaintiff has deposited such money * * * into the registry of the court * * *." These facts were pleaded in the Complaint, and plaintiff by moving to dismiss has, of course, admitted them to be true for purposes of this appeal.

As held in the cases cited by appellee Baldwin in his brief herein, there is no restriction on the scope of that clear language anywhere in the Judicial Code or in the Federal Rules of Civil Procedure. It is submitted that when appellant urges that District Courts have no *power* to entertain an interpleader action brought by a trustee,[2] who alleges the jurisdictional facts, and when appellant further seeks to impose, as a condition to *jurisdiction,* that there be a showing of *bona fides,* appellant is simply asking that this Court by judicial action, in effect, amend the clear and unqualified terms of a simple statute.

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[1]Italics, unless otherwise indicated, are supplied.

[2]Actually plaintiff is no more than a stakeholder or escrowholder—not a trustee—as the so-called "trust" Agreement shows [Tr. p. 84].

II.

The Findings That the Claim of Defendant Law Firm Is Tenable and Is Asserted in Good Faith, Are Supported and Were Not Made in Error.

Appellant's Brief commencing at page 19, asserts that the Court below erred in finding that the claim of the defendant law firm was tenable [Tr. p. 190] and was asserted in good faith [Tr. p. 192].

A. The Claim of Defendant Law Firm Was Tenable.

The agreement between appellant and the law firm was that the latter "* * * shall receive 15% of all sums realized * * *" by appellant in the event the matters in controversy were "* * * settled by agreement after the filing of any suit * * *" [Tr. p. 45]. Appellant affirmatively asserted under oath to the United States Treasury Department that the above agreement constituted an *assignment* of a 15% contingent interest to the law firm [Tr. pp. 35-38; 54, 55].

An agreement that an attorney shall "receive" or "have" a percentage of a recovery, operates to vest title in the attorney to the extent of that percentage of the recovery when it is received; and after notice of the right of the attorneys, all parties dealing with the assignor do so at their peril.

Barnes v. Alexander, 232 U. S. 117, 68 L. Ed. 530;

Wylie v. Coxe, 15 How. (U. S. 415, 14 L. Ed. 753;

Woodbury v. Andrew Jergins Co., 69 F. 2d 49, (C. C. A. 2, 1934);

Wilson v. Seeber, 72 N. J. Eq. 523, 66 Atl. 909;

Geddes v. Reeves, 20 F. 2d 48 (C. C. A. 8, 1927), cert. den. 275 U. S. 556, 72 L. Ed. 424;

Lewis v. Braun, 356 Ill. 467, 191 N. E. 56;

Fairbanks v. Sargent, 104 N. Y. 108, 9 N. E. 870, and further opinion in 117 N. Y. 320, 22 N. E. 1039;

Hawk v. Ament, 28 Ill. App. 390;

Northern Texas Traction Co. v. Clark & Sweeton, 272 S. W. 564 (Tex. Civ. App. 1925);

Ives v. Culton, 229 S. W. 321 (Tex. 1921);

C. W. Hahl & Co. v. Hutcheson, 196 S. W. 262, (Tex. Civ. App. 1917);

Wagner v. Sariotti, 56 Cal. App. 2d 693.

In the *Barnes case, supra,* the United States Supreme Court had before it an agreement between two attorneys as follows: "* * * I will give you one-third of the fee which I have coming to me * * *." There was no formal instrument of transfer or assignment. The Supreme Court held that even though words of contract rather than of conveyance were used the parties nevertheless had in mind only the fund to be recovered and that it was intended that one-third of that fund itself if, when, and as received would go to the promisee. The Court held a lien in the attorney's favor came into existence by operation of that agreement.

In the *C. W. Hahl & Co.* case, the agreement before the Court of Civil Appeals of Texas provided that the clients agreed "* * * to pay to" the attorney "* * * one half of any amount that may be recovered * * *." There also the contract contained no words of transfer or

conveyance or assignment. Citing numerous authorities the court held as follows, at 196 S. W. 266:

> "We think the contract above mentioned, construed in the light of the circumstances under which it was made, clearly evidences that the intention of the parties in its execution was to give appellees one-half of the judgment rendered in the suit, *and notwithstanding the fact that it contains no words of conveyance of an interest in the cause of action,* when the judgment was obtained appellees became the equitable owners of one-half thereof. *'An equitable or constructive assignment does not depend upon any particular form of words, but the court of equity constructs the assignment out of the situation of the parties. Any language or act which makes an appropriation of a fund amounts to an equitable assignment of that fund. No particular form of words or form of instrument is necessary.'* "

In the *Northern Texas Traction Co.* case, the same Texas Court had before it a contract by which the attorneys were "to have a one-third" portion of whatever amount of money should be *"realized or received"* if the matter was disposed of by compromise and "to have a 40%" portion of the amount of any judgment for damages rendered on the trial. Before the case came to trial the clients effected a settlement with the defendant and refused to pay the attorney's fees. In an action brought by the attorneys against their client and the defendant, the Court held as follows, at page 567:

> "As between the attorneys and their client, one-third of the particular sum of money belonged, with-

out doubt, in good conscience and equity, to the attorneys. It is within the fixed rule that an agreement between client and attorney, by which the attorney is to have for his services a fixed portion of whatever amount of money shall be realized or received, whether on settlement or without settlement, on account of such claim as shall be put in suit, whether of tort or contract, constitutes an equitable assignment pro tanto. The doctrine is fully laid down in Story Eq. Jur. section 1040, and in 3 Pomeroy Eq. Jur. section 1280. The rule is followed in this state. (Citations.) Being as it is, an 'equitable assignment pro tanto' of the particular sum of money, the interest therein is not merely a lien or charge, *but in the nature of property vesting absolutely in the assignee attorneys.*

"* * *

"As assignees having dominion over the assigned portion, the attorneys required no authority or consent to authorize them to collect and receive their fixed portion of the particular debt, and the debtor traction company had no authority or right to refuse payment or to settle and pay that fixed portion to any one but the assignee attorneys. And, after notice of the assignment was given to the debtor, in this case the traction company, *such assignment became so far complete as to vest title absolutely in the attorneys as assignees,* as against attaching creditors of the assignors, and collusive agreements of the assignors and the debtor."

The Court described the position of the debtor after receiving notice of the assignment as follows, at page 568:

"After notice the debtor deals with the assignor at his peril. 4 Cyc. p. 90. It is only in case the debtor

makes payment of the full sum of money to the assignor before notice of the assignment that the payment will be valid against the assignee."

Under the above authorities it is respectfully submitted that appellee Rasberry and his law firm did in fact have an absolute right to 15% of each and every installment. The claim therefore was tenable and the finding to that effect was supported.

B. The Claim of the Law Firm Was Asserted in Good Faith.

The exhibits to the Rasberry affidavit [Tr. pp. 44 to 68, incl.] and those to the Baldwin affidavit [Tr. pp. 84 to 165, incl.], together with the other facts as outlined in appellee Baldwin's brief, clearly demonstrate that appellee Rasberry, as well as appellee Baldwin, acted in entire good faith in the whole matter. They show not only an agreement by appellant in favor of appellee Rasberry that the latter "shall receive 15% of all sums realized" [Tr. p. 44] but reflect numerous and repeated claims by appellee Rasberry that the latter was "entitled to 15% of the proceeds" [Tr. pp. 56, 63 and 65], *copies of each of which were sent to the officers of appellant* [Tr. pp. 39, 57, 41, 63, 42, 66]. The evidence affirmatively shows that appellant itself unequivocally recognized under oath in Federal tax returns that there had been *"assigned"* to appellee Rasberry the 15% "contingent interest" in all recoveries [Tr. pp. 54 and 55]. Further the whole matter was fully explained to Mrs. Letha L. Stephenson by appellee Rasberry by his letter of May 31, 1947, with which was en-

closed appellee Rasberry's letter of the same date to Mr. Garfield [Tr. pp. 39, 56 and 59]. Furthermore the *separate* checks for the 15% payable to appellee Rasberry of the third, fourth and fifth installments were endorsed not only by appellee Rasberry *but also by the officers of appellant* [Tr. pp. 40, 41, 42, 116, 122 and 130].

The "confidential letter" of May 31, 1947 [Tr. p. 108] —of which appellant attempts to make so much capital— was simply a harmless and non-prejudicial statement advising appellee Baldwin's predecessor specifically as to the attorneys' fee agreement of August 6, 1943, between appellant and appellee Rasberry, together with a further statement that the separate check for the attorneys' fee could be payable to both appellant and appellee Rasberry as joint payees.

This "confidential letter" was enclosed in the same envelope as the other letter of May 31, 1947 [Tr. p. 76], a copy of which went to Letha L. Stephenson [Tr. pp. 76, 39], in which appellee Rasberry not only stated his claim to 15% of the proceeds [Tr. p. 107] but also requested that the 15% be the subject of a separate check payable only "to this firm." The "confidential letter" therefore, by stating there was no objection that the 15% check be made payable to both the law firm and appellant, actually *modified* the request in favor of appellant. How can this be bad faith on anyone's part?

That the law firm had a perfect right to address that "confidential letter" solely to appellee Baldwin's predecessor, without advising appellant, is clear from the fol-

lowing language, also above quoted from the *Northern Texas Traction Co.* case, 272 S. W. 564, 567:

> "As assignees having dominion over the assigned portion, the attorneys required no authority or consent to authorize them to collect and receive their fixed portion of the particular debt, and the debtor traction company had no authority or right to refuse payment or to settle and pay that fixed portion to any one but the assignee attorneys."

Appellant contends (App. Br. p. 34) there was bad faith since appellee Rasberry in his letter of June 4, 1947 [Tr. p. 113], to Mr. Garfield, did not *insist* on direct payment of the 15% to himself alone, but rather was content to have that check made payable jointly to the firm and appellant. Had the reverse happened—had appellee Rasberry insisted on being sole payee and had appellee Baldwin so made and paid the 15% check without either appellee advising appellant—there might be some substance to the point. But on this record, appellant is simply arguing there was bad faith because nothing was done behind its back!

It is respectfully submitted that appellee Rasberry and his law firm, as well as appellee Baldwin and his predecessors, acted in complete and entire good faith on the whole matter. Nothing was kept from appellant, in fact, the record discloses that the appellant was kept fully advised of everything. The findings of good faith, it is submitted, are well supported.

Conclusion.

A controversy between a client and his attorney is always regrettable. The most that has happened here, however, is that a controversy has arisen. There has been no bad faith either on the part of appellee Baldwin or on the part of appellee Rasberry and the law firm.

Appellee Baldwin is simply in a position where he has been confronted with conflicting claims. His situation is precisely the one for which the Federal Interpleader Act was enacted. The court below had jurisdiction and acted properly in making the order under appeal.

Respectfully submitted,

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